

1 TRINETTE G. KENT (State Bar No. 025180)
2 11811 North Tatum Blvd., Suite 3031
3 Phoenix, AZ 85028
4 Telephone: (480) 247-9644
5 Facsimile: (480) 717-4781
6 E-mail: tkent@leberglaw.com

7 *Of Counsel to*
8 Lemberg & Associates LLC
9 A Connecticut Law Firm
10 1100 Summer Street
11 Stamford, CT 06905
12 Telephone: (203) 653-2250
13 Facsimile: (203) 653-3424

14 Attorneys for Plaintiff,
15 Don Lavetter

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Don Lavetter,

19 Plaintiff,

20 vs.

21 USOnline.com d/b/a Sudden Values; and
22 DOES 1-10, inclusive,

23 Defendants.
24
25
26
27
28

Case No.:

COMPLAINT

JURY TRIAL DEMANDED

1 For this Complaint, the Plaintiff, Don Lavetter, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
7

8 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

9 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
10 Defendants transact business here, Plaintiff resides in this judicial district, and a
11 substantial portion of the acts giving rise to this action occurred here.
12

13
14 **PARTIES**

15 4. The Plaintiff, Don Lavetter (hereafter "Plaintiff"), is an adult individual
16 residing in Tucson, Arizona, and is a "person" as defined by 47 U.S.C. § 153(10).
17

18 5. The Defendant, USOnline.com d/b/a Sudden Values (hereafter "Defendant"), is
19 a Washington company with an address of 2900 Euclid Avenue, Suite A8, Wenatchee,
20 Washington 98801, and is a "person" as defined by 47 U.S.C. § 153(10).
21

22 **FACTS**

23 6. Beginning in or around November 2012, Defendant began contacting Plaintiff
24 by sending text messages to Plaintiff's cellular telephone.
25
26
27
28

1 7. At all times mentioned herein, Defendant contacted Plaintiff on his cellular
2 telephone using an automated telephone dialing system ("ATDS") and/or by using
3 artificial messages.
4

5 8. Each of Defendant's text messages contained an advertisement for weekly
6 specials at a restaurant.
7

8 9. Out of frustration, Plaintiff followed Defendant's instructions contained in the
9 text messages to be removed from its messaging system by texting "STOP" to
10 Defendant.
11

12 10. Plaintiff also followed Defendant's instructions on its website to be removed
13 from the text message list.
14

15 11. Despite Plaintiff's efforts, however, Defendant continued to send text messages
16 to Plaintiff's cellular telephone.
17

18 **A. Plaintiff Suffered Actual Damages**

19 12. The Plaintiff has suffered and continues to suffer actual damages as a result of
20 the Defendants' unlawful conduct.
21

22 13. As a direct consequence of the Defendants' acts, practices and conduct, the
23 Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional
24 distress, fear, frustration and embarrassment.
25
26
27
28

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –

47 U.S.C. § 227, et seq.

14. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

15. Defendants contacted Plaintiff on his cellular telephone using an automatic telephone dialing system (“ATDS”) and/or by using artificial messages in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

16. Plaintiff either never provided express consent to Defendants to message his cellular telephone number, or Plaintiff revoked his consent to be contacted by Defendants on his cellular telephone by his repeated demands to cease messaging his cellular telephone.

17. The messages from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Each of the aforementioned messages sent by Defendants constitutes a negligent or intentional violation of the TCPA, including each of the aforementioned provisions of 47 U.S.C. § 227, et. seq.

19. As a result of each of Defendants’ negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each message in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each of Defendants' knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants as follows:

- A. Statutory damages of \$500.00 for each violation pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful or intentional pursuant to 47 U.S.C. § 227(b)(3)(C); and
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: April 25, 2013

LEMBERG & ASSOCIATES, LLC

By: /s/ Trinette G. Kent
Trinette G. Kent

Attorney for Plaintiff,
Don Lavetter